

DEPARTMENT OF
ECOLOGY
State of Washington

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**Revolving Fund
State Environmental Review
Process and
Federal Cross Cutter Guidelines**

**Department of Ecology
Water Quality Program**

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State Environmental Review Process and
Federal Cross Cutter Guidelines**

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Chapter 1 – Introduction

What is the State Environmental Review Process, and why is it important?

The Federal Clean Water Act of 1987 allows for states to administer Water Pollution Control Revolving Fund (SRF) programs to finance clean water projects. The Act requires states to review the potential environmental impacts of construction projects financed through the SRF program. This review is referred to as the State Environmental Review Process (SERP). The specific federal requirements for SERP are found in 40 CFR 35.3140.

SERP embraces the spirit of National Environmental Policy Act (NEPA) “to prevent or eliminate damage to the environment”. Like NEPA, the purpose of SERP is to foster excellent action. SERP requires a good-faith look at the potential environmental impacts and a full and honest disclosure of impacts to the public.

Washington State’s SERP was developed to compliment the State Environmental Policy Act (SEPA) process established in 1971. SERP procedures add some additional federal requirements to the SEPA process and incorporate review and concurrence by Ecology.

SERP should be considered part of the planning process in order to ensure that environmental consequences are fully considered and addressed before actions are taken. SERP must be completed before potential financial assistance applicants can apply for design or construction projects. Applicants with design/construction projects (Step 4) must likewise complete SERP before they apply for financial assistance.

Does SERP apply to the project?

Any applicant with a facility design or construction project applying for SRF financing must complete SERP prior to submitting the application for funding. This includes wastewater, stormwater (construction only), reclaimed water, combined sewer, and Large On-Site Systems.

Any recipient with a facility planning project using SRF financing must include SERP as part of the scope of work in the loan agreement. Recipients with stormwater design projects will also have SERP be a component of the scope of work in the loan agreement. Stormwater projects that are design/construct will not be permitted to begin construction activities until SERP is complete.

If a federal agency has already reviewed the project under NEPA, Ecology may be able to adopt that NEPA review.

What are Cross-Cutting Federal Authorities, and why are they important?

Activities by federal agencies, actions permitted by these agencies, and projects receiving federal funds (including Ecology and assistance recipients) are required to comply with a number of federal laws and executive orders. These mandates are known as Cross-Cutting Federal Authorities or “cross cutters”. Cross cutters apply to all federal actions regardless of which agency (federal, state, local, or tribal) is taking the action. No federal agency action (or federally funded action) can jeopardize the continued existence of an endangered or threatened species.

Many of the cross cutters require a review of projects and actions to determine if they will have a negative effect on a protected resource (e.g. endangered species). The reviews required by these cross cutters must be complete before a project can receive SRF financing. The most natural and logical time to address these cross cutters is during the SERP review process.

The federal cross cutters that apply to SRF financed projects in Washington State are:

- Clean Air Act
- Coastal Zone Management Act
- Endangered Species Act
- Environmental Justice
- Farmland Protection Policy Act
- Floodplain Management Executive Orders
- National Historic Preservation Act
- Safe Drinking Water Act
- Sustainable Fisheries Act (Essential Fish Habitat)
- Wetland Protection Executive Orders
- Wild and Scenic Rivers Act

There are other cross cutters, for example, the Coastal Barriers Resources Act. However this act only applies to states along the gulf coast (i.e. states that have coastal barrier islands) and does not apply to projects in Washington State. Cross cutters that do not apply to clean water projects financed through the SRF program are not discussed in this guide.

Other cross cutters like the Civil Rights Act of 1964 or minority and women owned business participation requirements deal with project implementation and do not fit naturally into the SERP review process. SRF financed projects must comply with these cross cutters, but they are not discussed in this guide.

There is also currently one Washington State cross cutter. In 2005 Governor Gregoire signed Executive Order 05-05 requiring archeological and cultural resource review for all state funded capital projects not receiving a Section 106 review under the National Historic Preservation Act.

Do the Federal Cross Cutters apply to my project?

Any wastewater facility construction project offered SRF financing must comply with all federal cross cutters before Ecology can sign a financial assistance agreement for the project. This includes wastewater treatment, wastewater collection, reclaimed water, infiltration and inflow correction, and combined sewer projects.

Any capital construction project offered state financing must comply with Section 106 or Executive Order 05-05 before Ecology can sign a financial assistance agreement for the project. This includes wastewater, stormwater, combined sewer, and septic repair and replacement projects.

If a federal agency has already reviewed the project against the federal cross cutters, Ecology may be able to adopt that agency's analysis.

What are an “engineering report” and a “facilities plan”?

An additional requirement for SRF financing is that the project must be “the cost effective solution to the water pollution control problem” (Chapter 173-98-730 WAC). Demonstrating that a particular technical solution will 1) solve the water quality problem and 2) is the cost effective solution may require detailed technical and engineering analysis. For wastewater treatment facilities this technical analysis is usually in the Engineering Report required to meet Ecology rules (Chapter 173-240 WAC). Stormwater projects and other “non-sewage” projects must also include a technical analysis demonstrating the projects effectiveness. This technical review is part of the planning process and typically occurs side by side with SERP review.

A “facility plan” refers to the complete package of planning documents required to be eligible to apply for SRF funding. A facility plan includes the technical review, the cost effectiveness analysis, and the SERP review.

Chapter 2 - Procedures for SERP

Where to Start?

Applicants should start the SERP process by meeting with representatives from Ecology. Both Ecology and the applicant have responsibilities under SERP and in order to ensure projects are eligible for funding and prevent delays, applicants and Ecology staff must coordinate their actions and maintain open communication throughout the process. A project kickoff meeting is a good way to establish these patterns from the start of the process. The project kickoff meeting may focus on the technical or permitting aspects of the project, but it is never too early in project planning to consider financing.

During the kickoff meeting with Ecology:

1. Always check the project details to make sure SERP applies.
 - a. Ecology manages many funding sources, and not all require SERP. The type of project and the type of funding involved will determine if SERP is necessary. Always check with Ecology staff before proceeding with a funding application.
 - b. Only applicants applying for loan funding are required to complete SERP.
 - c. Only applicants applying for facility design and construction projects are required to complete SERP.
2. Always check for another federal nexus. If another federal agency is already taking lead on the environmental review Ecology may be able to adopt that agency's work.
3. If the applicant needs to complete SERP, start by identifying the potential resource impacts that this project could have in the project area. This may require the applicant to develop a more thorough description of the project, including precise project locations, details of individual structures, and construction techniques. The applicant may also have to do additional research or contact federal or state resource agencies to identify the resources.

SERP builds on SEPA review

The review completed in accordance with the State Environmental Policy Act (SEPA) is Washington State's environmental review process. A basic overview of SEPA is available at: <http://www.ecy.wa.gov/biblio/0206013.html>. SEPA applies to decisions made by every state and local agency, including state agencies, counties, cities, ports, and special districts. The SEPA lead agency is responsible for identifying and evaluating the potential adverse environmental impacts of a proposal. This evaluation is documented and sent to other agencies and the public for review and comment. Every facility construction project is subject to SEPA review regardless of how the project is financed.

SEPA was first adopted in 1971 (two years after the adoption of NEPA) and is modeled on the federal NEPA process. The legal basis for SEPA is implemented through [Chapter 197-11 WAC](#) (the SEPA rules). SEPA utilizes an interdisciplinary approach to identify adverse environmental effects, and provides a mechanism for public participation and documenting lead agency decisions.

SEPA provides a consistent statewide process to identify environmental consequences of projects and document the determinations of the significance of those consequences. The lead agency may determine that the project is categorically exempt from SEPA review. If the lead agency has enough information to determine that the proposal is unlikely to have a significant adverse environmental impact, the agency will issue a determination of non-significance (DNS). If the information indicates the proposal is likely to have a significant adverse environmental impact, the lead agency will require the preparation of an environmental impact statement (EIS). The EIS will include an evaluation of alternatives to the proposal and measures that would eliminate or reduce the likely environmental impacts of the proposal. The SEPA Handbook provides detailed guidance on the process:

<http://www.ecy.wa.gov/programs/sea/sepa/handbk/hbtoc.html>

Requirements for SERP

SEPA provides an excellent framework for considering the environmental consequences of a project and provides a familiar, well understood method for citizens in Washington State to provide their input. However; SEPA alone does not meet all the federal requirements that projects using SRF financing are required to meet. Several elements must be added.

1. SEPA documentation
2. Cost effectiveness analysis
3. Public participation
4. Review and concurrence by Ecology

Each of these additional steps is discussed in more detail in the following sections.

Use of other documents

SERP will often ask for analysis or review that has been prepared in another document, either in a planning document, engineering report, or a pre-design report. There is no need to do the work twice, or reproduce the work. Applicants can reference the original source of the analysis and attach copies of the relevant pages to the SERP submittal.

Using NEPA to satisfy SERP review

If another federal agency (e.g. Rural Development or the Environmental Protection Agency [EPA]) has completed a NEPA review of the project, that review can be used to satisfy SERP requirements. Applicants who have completed the NEPA process should also adopt the federal environmental review documents according to Part 6 of SEPA rules.

To substitute NEPA for SERP, submit the federal agencies' findings and NEPA documentation. Ecology staff will review the documentation to verify that the scope of review under NEPA matches the scope of work for the project requesting funding. Ecology's Regional Project Manager will fill out and sign the Environmental Review Adoption Checklist when Ecology has determined that the NEPA review meets SERP requirements. The regional Section Manager will mail a document adoption letter to the applicant.

Cost Effectiveness Analysis

Prior to applying for Ecology funding a potential applicant must demonstrate that the project is the cost-effective solution to the water quality problem. This is normally demonstrated using a cost effectiveness analysis. WAC 173-98-730 describes the specific requirements. The cost effectiveness analysis might be a standalone document, or may have been prepared as part of the engineering report or pre-design report for the project. Attach a copy of the cost effectiveness analysis for the project to the SERP submittal.

The cost effectiveness analysis will provide valuable information an applicant will need in order to answer many questions citizens may have about the project (see Public Participation below).

The cost effectiveness analysis will, at a minimum:

- Provide information on the range of alternatives considered that could solve the water quality problem.
- Provide information on the life cycle costs (construction costs plus operating costs) for each alternative.
- Include considerations of the non-monetary costs and benefits (such as environmental impact, energy efficiency, carbon footprint, growth impacts, and community priorities) for each alternative.
- Demonstrate that the chosen alternative is the cost-effective solution to the water quality problem.

Public Participation

SERP utilizes the public comment processes of SEPA to meet the federal public notice and participation requirements. However, in addition to the standard 14-day SEPA comment period, SERP also requires an additional opportunity for the public to comment on the proposal. SRF applicants must hold a public meeting to describe the preferred alternative and provide an opportunity for public comment. This meeting should address all environmental, technical and financial issues of the project.

These opportunities can take almost any form as long as they are advertised, open to the public, and provide an opportunity for the public to comment on the project (council meetings, public hearings, a public meeting, town hall meetings, etc.). The format of the meeting should be appropriate to the community and the scope of the project. What matters is that the

community has an opportunity to learn about the project, the impacts of the project, and to provide input to decision makers.

Applicants for SRF funding must provide documentation that a public meeting was held (for example meeting minutes) with the SERP submittal. The documentation must show that the meeting was advertised, that the impacts of the project were described, and that the public had an opportunity to comment on the proposal. Any oral comments from the public meeting must also be documented and submitted.

The applicant should include the following information in the SERP documentation that is submitted to Ecology to meet the public participation requirement: the name of the publication where the public comment and public meeting information was published, date of the publication, all comments (oral and written) and dates comments were received, and how the comments were addressed.

Other federal cross cutters (environmental justice, floodplains, critical farmland, etc.) may also require that the funding applicant conduct a public meeting to receive comments regarding impacts to these specific resources. Ecology recommends that funding applicants coordinate their reviews so that a single meeting can meet all requirements.

Cross Cutter Review

In addition to SERP review (which is required prior to application), an applicant awarded SRF funding for a wastewater construction project must comply with all applicable federal cross cutters. Ecology recommends that applicants coordinate cross cutter review with the overall SERP review for the project. This may not be possible in all cases.

At a minimum SERP review will include an evaluation of the protected resources the project may affect, and which cross cutters may apply to the project. The SERP Coversheet includes a series of screening questions to help Ecology staff and funding applicants determine which cross cutters apply to the project.

Review and concurrence by Ecology

Applicants for funding will normally work closely with Ecology staff during SERP review to ensure the process is thorough and complete, and that all the documentation is in adequate. When the process is complete, the applicant will provide two copies of their SERP submittal to Ecology. A complete SERP submittal will include the following information and documentation:

- A completed SERP Coversheet.
- A Cost Effectiveness Analysis.
- SEPA determination from the SEPA lead agency, and any accompanying documentation.
- Documentation of opportunities for Public Input.

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The documentation accompanying the lead agency's SEPA determination can vary from a brief project description (for categorical exemptions) to a SEPA checklist and comments received (for a Determination of Non Significance) to a complete EIS, DEIS and scoping document (for a Determination of Significance).

Ecology staff will review the SERP submittal against the requirements. When Ecology's Regional Project Manager has determined that the submittal is adequate they will fill out and sign the SERP Checklist. Ecology's Regional Section Supervisor will then mail a letter formally concurring that project complies with SERP.

Chapter 3 – Federal Cross Cutters

SRF recipient responsibilities

Part of the recipient's obligation, when accepting federal money for a project, is compliance with federal laws and regulations (referred to as cross cutters). Many cross cutters affect how a project is implemented, bid, or managed. These requirements are detailed in the loan agreement and are implemented in the construction contract by including the Ecology specification inserts into the bid package.

This section of the guidance discusses the cross cutters that must be addressed prior to the construction phase of an SRF funded project and can affect the project's design. These cross cutters act to protect critical resources (e.g. sole source drinking water aquifers, endangered species, wetlands, etc.). Before funding can be committed to a project, Ecology must ensure that the project will have the minimum possible impact on these protected resources. These cross cutters apply to SRF financed wastewater construction projects in Washington State:

- The **Clean Air Act** establishes air quality standards. This cross cutter applies to projects located in nonattainment areas (areas out of compliance with the standards) or maintenance areas (areas that have come back into compliance). Compliance may require estimating the air pollution emissions associated with your project.
- The **Coastal Zone Management Act (CZMA)** protects the nation's coastal areas. This cross cutter applies to any project located in a county adjacent to the Puget Sound, the Pacific Ocean, or the Lower Columbia River Estuary. Compliance requires receiving CZMA concurrence from Ecology.
- The **Endangered Species Act** identifies and protects species at risk of extinction. This cross cutter may apply if your project is located near any endangered species or their critical habitat. Because so many of Washington's rivers are habitat for endangered salmonoid species, this cross cutter applies many water quality projects. Compliance may require receiving formal concurrence after consultation with the US Fish and Wildlife Service and the National Marine Fisheries Service.
- **Environmental Justice** seeks to protect minority, low-income and tribal communities that may experience disproportionate environmental or human health impacts caused by project activities.
- The **Farmland Protection Policy Act** protects the nation's productive farmland. This cross cutter may apply if your project converts farmland to another purpose. Compliance may require consultation with the US Soil Conservation Service.
- **Floodplain Management Executive Orders** are a series of presidential executive orders that protect floodplain function and protect federally funded projects from flood damage. This cross cutter may apply if your project is located in the 100-year floodplain. Compliance may require consultation with the Federal Emergency Management Agency.

- The **National Historic Preservation Act** protects archeological and cultural resources and historic structures. This cross cutter may apply if your project modifies a building older than 50 years old, or if your project involves any amount of excavation.
- The **Safe Drinking Water Act** protects sole source drinking water aquifers. This cross cutter may apply if your project is located on a sole source aquifer. Compliance may require consultation with the Environmental Protection Agency.
- The **Sustainable Fisheries Act** protects habitat for commercially valuable fish species. This cross cutter may apply if your project is located near essential fish habitat. Compliance may require consultation with the National Marine Fisheries Service.
- **Wetland Protection Executive Orders** protect the nation's wetlands. This cross cutter may apply if your project is located near any wetlands. Compliance may require consultation with the US Fish and Wildlife Service.
- The **Wild and Scenic Rivers Act** protects the free flowing character of designated rivers. This cross cutter may apply if your project is located in the river basin of a wild and scenic river. Compliance may require consultation with the US Forest Service.

Cross Cutter Guidance

Each cross cutter has its own regulations individual procedures, but each generally requires three steps.

1. Investigate the protected resources located in the vicinity of the project and evaluate the impact the project could have on the resources.
2. Document that the project will have no impact on the protected resources, or take steps to prevent, minimize or mitigate for an impact.
3. If necessary, involve the federal resource protection agency and incorporate required modifications or recommendations as appropriate.

The federal resource agency's level of involvement varies depending on the specific project and cross cutter. Several of the cross cutters require applicants to implement required project modifications or to consider recommended project modifications. All project modifications resulting from cross cutter review will also become requirements of the financial assistance agreement.

The following eleven chapters identify information, resources, and procedures specific to each of the federal cross cutters and provide links to on-line resources.

The best time to address the federal cross cutters is during SERP review. Coordinating these reviews will save time and money, prevents project delays, and improves opportunities to receive funding.

This guidance presents a summary of what Ecology believes most public bodies need to know to comply with the federal cross cutters. For more detailed discussion on federal cross cutters

and how they apply to State Revolving Fund programs throughout the country, refer to the EPA handbook “Cross-Cutting Federal Authorities” at:

<http://www.epa.gov/owm/cwfinance/cwsrf/enhance/DocFiles/Other%20Docs/CrosscutterHandbook.pdf>.

Cross Cutter Report

Loan applicants/recipients will prepare a cross cutter report that documents their actions in regard to each federal cross cutter. When complete, the applicant/recipient will submit the report to the regional Project Manager for review. When all cross cutters have been approved by the federal and state resource agencies, Ecology’s regional Section Manager will send a cross cutter report concurrence letter to the applicant/recipient that the loan agreement may be signed.

Chapter 4 - Clean Air Act

Background

All SRF funded wastewater construction project recipients must conform to State Implementation Plans adopted under the Clean Air Act.

The Federal Clean Air Act (CAA) imposes responsibilities for its implementation on all levels of government. Among other things, the CAA directs EPA to set ambient air quality standards sufficient to protect the public health and welfare. Whenever EPA sets or revises an ambient air standard, the CAA requires EPA to designate all areas of each state as attainment (meets the standard), nonattainment (fails to meet the standard), or unclassifiable (insufficient information).

The CAA requires the state to develop a State Implementation Plan (SIP) to bring each nonattainment area into compliance with the standard in a timely manner. A former nonattainment area, which has come into compliance with the standards, is referred to as a “maintenance area.” In Washington, SIPs for nonattainment and maintenance areas are prepared by Ecology’s Air Quality Program or a local Clean Air Agency and Ecology submits them to the EPA for approval. The cross cutting authority in the CAA applies to projects located in nonattainment or maintenance areas.

In Washington there are several nonattainment and maintenance areas (for small particulate matter, ozone, and carbon monoxide). They tend to be in urban areas with numerous highways and other roads.

Useful References

- Air Quality Criteria Pollutants and Standards:
http://www.ecy.wa.gov/programs/air/other/Criteria_Stnds.htm
- WA’s Local Clean Air Agencies: <http://www.ecy.wa.gov/programs/air/local.html>
- Air Quality Maps of Maintenance Areas:
http://www.ecy.wa.gov/programs/air/other/namaps/web_map_intro.htm
- Nonattainment Areas in WA:
<http://www.ecy.wa.gov/programs/air/Nonattainment/Nonattainment.htm>
- EPA’s Frequently Asked Questions
http://www.epa.gov/air/genconform/documents/gcgqa_940713.pdf

Procedure

1. Is the proposed project in a nonattainment or maintenance area? If the answer is “no”, the recipient must provide maps to document its proximity to the nonattainment or

maintenance area. The project complies with the Clean Air Act (CAA), and no further analysis is necessary. If the answer is “yes”, go to step 2.

2. Recipients with proposed projects in a nonattainment or maintenance area must determine the direct and indirect emissions resulting from construction of the proposed project. The analysis only considers temporary or construction related impacts. Ongoing emissions from an operating facility will be permitted separately, and are not considered in this analysis. Document the emissions estimates (and calculation methods) in the cross cutter report.
3. Are the proposed project’s emissions for each nonattainment pollutant below the de minimis thresholds set forth in the CAA conformity regulations? If the answer is “yes”, the project is presumed to conform to the SIP. The project complies with the CAA. Identify the appropriate de minimis threshold in the cross cutter report, no further analysis is necessary. If the answer is “no”, go to step 4.
4. A recipient with a proposed project that exceeds the de minimis thresholds must prepare a conformity analysis and work with Ecology’s Air Quality Program or a local Clean Air Agency to demonstrate that the project conforms to the approved SIP. Recipients cannot receive funding for projects unless they are found to conform. Attach the analysis and determination from the local Clean Air Agency to the cross cutter report.

Chapter 5 - Coastal Zone Management Act

Background

All SRF wastewater construction project recipients must ensure that activities in the coastal zone are consistent with the enforceable policies of the Coastal Zone Management Act (CZMA).

The federal Coastal Zone Management Act (CZMA) of 1972 created a partnership between the federal government and coastal states and territories and provides states with the ability to weigh in on projects undertaken by the federal government, licensed, or funded by the federal government. All applicants must ensure activities in the coastal zone are consistent with the state Coastal Zone Management Program (CZMP). Washington State's program identifies six laws with which applicants must comply.

- Shoreline Management Act (including local government shoreline master programs)
- State Environmental Policy Act (SEPA)
- Clean Water Act
- Clean Air Act
- Energy Facility Site Evaluation Council (EFSEC)
- Ocean Resource Management Act (ORMA)

Washington's CZMP is administered by Ecology's Shorelands and Environmental Assistance (SEA) Program, which is also responsible for CZMA "federal consistency certification" reviews.

Washington's coastal zone is comprised of the following 15 counties: Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Wahkiakum and Whatcom. Each of the counties borders saltwater; either the Pacific Ocean, the Puget Sound, or the lower Columbia River estuary.

Useful References

- Coastal Zone Management Act: [16 USC 1451 - Coastal Zone Management Act](#)
- Coastal Zone Management Program Regulations: [15 CFR Part 923](#)
- Subpart D: Federal Consistency with Approved Coastal Zone Management Programs. United States Department of Commerce: [15 CFR Part 930.50](#)
- WA Coastal Zone Management Program federal consistency information: <http://www.ecy.wa.gov/programs/sea/czm/fed-consist.html>

Procedure

1. Is the proposed project located in one of the 15 Washington's coastal counties? If the answer is "no", there is no need for consultation. Note the project's location outside of a

coastal county in the cross cutter report. No further action is required. If the answer is “yes”, go to step 2.

2. Projects located in the coastal zone must meet federal consistency requirements. Recipients must review the proposed project for consistency with the six laws (below), prepare a “federal consistency certification”, and submit it to Ecology’s Shorelands and Environmental Assistance (SEA) Program for review.
 - Shoreline Management Act (including local government shoreline master programs).
 - SEPA.
 - Clean Water Act.
 - Clean Air Act.
 - Energy Facility Site Evaluation Council (only energy production e.g., cogeneration facilities).
 - Ocean Resource Management Act.

A federal consistency certification describes how the proposed project is consistent with these six laws. The certification package includes the certification form (available at <http://www.ecy.wa.gov/programs/sea/fed-permit/index.html>), a site map, and project description.

3. If Ecology’s SEA Program concurs with the applicant’s federal consistency certification, the project complies with CZMP. Attach a copy of the certification package and the consistency determination to the cross cutter report. No further action is required.
4. If Ecology’s SEA Program cannot issue a consistency determination, Ecology’s Water Quality Program will act to facilitate consultation between the SRF applicant and the SEA Program. Conflicts can be addressed through informal discussions with the CZMA’s administering agencies. Projects cannot receive funding unless they receive a federal consistency determination.

Chapter 6 - Endangered Species Act

Background

The Endangered Species Act (ESA) requires that SRF funded wastewater construction projects do not jeopardize or destroy listed or proposed endangered and threatened species, nor adversely modify the designated critical habitat on which they depend.

Most projects funded through the SRF program could have at least some effect on endangered or threatened species. Therefore, nearly all public bodies must, at least informally, consult with the US Fish and Wildlife Service (USFWS) and/or National Marine Fisheries Service (NMFS) regarding endangered or threatened species or their critical habitat(s).

Based on information the applicant provides the EPA will determine the effects on listed endangered and threatened species and their critical habitat (listed resources): The three potential determinations of effects are:

1. ***No Effect:*** No impacts, positive or negative to species or critical habitat. Generally, the proposed project and its environmental consequences will have no effect on listed resources.
2. ***May effect, but is unlikely to adversely affect:*** All effects are beneficial, insignificant, or discountable. These designations are further defined as:
 - **Beneficial effects** have simultaneous positive effects without any adverse effects to essential resources.
 - **Insignificant effects** relate to the size of the impact and include those effects that are undetectable, not measurable, or cannot be evaluated.
 - **Discountable effects** are those extremely unlikely to occur.
3. ***May effect, and is likely to adversely affect:*** Listed resources are likely to be exposed to the action or its environmental consequences and will respond in a negative manner to the exposure.

Applicants must collect information about the listed resources in the vicinity of the project, document the exact location and nature of the project, and explain the potential effects the project may have on listed resources. The applicant may also need to complete a biological assessment (BA) that carefully examines the specific effects of the project on the listed resources.

The level of documentation required from the applicant depends on the potential effects of the proposed project. Applicants should coordinate early and throughout the planning process with Ecology to help them through the process.

Useful references

- 16 USC 1531 - Endangered Species Act: <http://www.usda.gov/rus/water/ees/pdf/esa.pdf>
- WA Department of Fish and Wildlife priority habitats and species: <http://wdfw.wa.gov/hab/phspage.htm>
- NOAA Fisheries critical habitat information: <http://www.nmfs.noaa.gov/pr/species/criticalhabitat.htm>
- USFWS's WA Endangered Species: <http://www.fws.gov/wafwo/species.html>
- Fish data for the Northwest: <http://www.streamnet.org/>

Procedure

1. The SRF recipient must investigate the presence of listed species or critical habitat (listed resources) in the vicinity of the project and evaluate the impact the project could have on them. Evaluate both terrestrial species under the jurisdiction of the USFWS and anadromous species under the jurisdiction of the National Marine Fisheries Service (NMFS). Consider direct, indirect, positive, and negative effects. Remember “no effect” means no effect of any kind.
2. If any listed resources are in the proposed project area, or if resources will be affected by the proposed project, go to step 3. If there are no listed resources in the project area or the project will not affect any listed resources, the recipient provides a preliminary “no effect” document to Ecology. The preliminary “no effect” document must document and explain why the project has no effect, of any sort, on listed species or critical habitat. Go to step 4.
3. The recipient must prepare a Biological Assessment (BA). The *Useful References* section of this procedure provides tools to locate and determine the potential effects of the project. The recipient will work with Ecology to ensure the level of detail and the BA is appropriate to the scope of the project. The project description in the BA must include any mitigation or protective elements incorporated into the project. These elements are part of the overall project and influence the determination of the project's effect. When the BA is complete, the recipient will submit it to Ecology.
4. Ecology will review the recipient's “no effect” document or BA to ensure it is complete and adequate. Ecology may request additional information, analysis, or documentation to complete the package. The recipient can propose a determination of effect in the BA, but the EPA will make the final determination. When the package is complete, Ecology will forward it to the EPA.
5. The EPA will evaluate the recipient's “no effect” document or BA and make a formal determination regarding the project's effect on listed resources. The EPA may request additional information from the recipient before making a formal determination. The EPA's effects determination will be one of the following:
 - a. The project has **no effect** on listed resources. In this case the EPA prepares a “No Effects” letter justifying this determination and mails it to Ecology and the recipient. The

- recipient has met the requirements of the ESA. Attach the “no effect” letter and all documentation to the cross cutter report. No further action is required.
- b. The project may affect listed resources, but is ***not likely to adversely affect*** listed resources. The EPA will initiate “informal consultation” with the federal services. The USFWS has jurisdiction over freshwater fish and terrestrial species and the NMFS has jurisdiction over marine and anadromous species. The EPA will forward the BA to the federal services and request concurrence on their determination. Go to step 6.
 - c. The project is ***likely to adversely affect*** species or habitat. In this case EPA will forward the BA to the services and initiate “formal consultation”. Go to Step 8.
6. During the informal consultation, the federal services may ask the recipient (and/or its consultant) questions about the proposed project, make recommendations, and otherwise give the recipient the opportunity to modify the project to minimize impacts on listed resources. Often, relatively simple modifications (such as avoiding in-stream activities during critical periods for fish) can make the difference between ***likely*** and ***not likely to adversely affect*** determinations. After informal consultation, if the services agree with the ***not likely to adversely affect*** determination, the services will prepare a concurrence letter and mail it to the EPA, Ecology, and the recipient.
 7. If the services concur with the ***not likely to adversely affect*** determination the recipient has met the requirements of the Endangered Species Act. Attach the concurrence letters from the services, the BA, and other documentation or communications to the cross cutter report. No further action is required. If the services make a ***likely to affect*** determination, formal consultation is required. Go to step 8.
 8. Projects that are ***likely to adversely affect*** listed resources require formal consultation with the federal services. Formal consultation will require significant communication between the recipient, Ecology, the EPA, and the federal services regarding the projects effects on listed species and critical habitat.
 9. The federal services will prepare a thorough analysis of the effects of the project and issue a “Biological Opinion” (BO), which the federal services will mail to the EPA, Ecology, and the recipient. The BO will include a jeopardy determination for the project relative to the survival of the listed species. The BO may include authorization for incidental “take” of the species. The BO may include project modifications the recipient ***must incorporate*** into the project. Attach the BO, the BA, and the jeopardy determination to the cross cutter report. Document how any required modifications have been incorporated into the project.

Chapter 7 – Environmental Justice

Background

All SRF recipients with wastewater construction projects must identify steps they are taking to ensure environmental justice concerns are addressed.

The SRF loan program incorporates environmental justice based on Federal Executive Order No. 12898. The EPA has directed Ecology to identify and address any “disproportionately high and adverse human health or environmental effects” from projects funded through the SRF program on minority, tribal, or low income populations. Any potential adverse effects on minority, low-income, and tribal populations, as well as alternatives or mitigating options should be described in the cross cutter report.

Environmental justice is defined as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income in the development, implementation, and enforcement of environmental laws, regulations, and policies. EPA has this goal for all communities and persons in the United States. Environmental justice is achieved when everyone has the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.

Useful References

- Executive Order 12898: <http://www.archives.gov/federal-register/executive-orders/pdf/12898.pdf>
- EPA’s Environmental Justice website: www.epa.gov/compliance/environmentaljustice/
- EPA’s Guidance for Incorporating Environmental Justice Concerns in EPA’s NEPA Compliance Analyses:
http://www.epa.gov/compliance/ej/resources/policy/ej_guidance_nepa_epa0498.pdf
- US Census Bureau page for Washington State:
http://factfinder.census.gov/servlet/SAFFPopulation?_event=Search&_name=&_state=04000US53&_county=&_cityTown=&_zip=&_sse=on&_lang=en&_pctxt=fph

Procedure

It is recommended that the recipient consult the EPA’s Guidance for Incorporating Environmental Justice Concerns in EPA’s NEPA Compliance Analyses (see link above) for additional suggestions on how to address environmental justice concerns.

All SRF recipients with wastewater construction projects must consider impacts to minority, low-income, and tribal populations in the community to ensure environmental justice concerns have been addressed. These include, but are not limited to:

1. Determine if a potential for disproportionate risk exists.
2. Ensure that communities have been sufficiently involved in the public participation process.
3. Consider communities that currently suffer, or have historically suffered from environmental risks or hazards.

In order to sufficiently consider these concerns the recipient should conduct the following analysis on the project area and potential impacts.

1. Conduct an analysis of potential environmental impacts on the project and surrounding areas. This is most easily done during the SEPA process. The recipient should use the best available information from multiple resources to make the most thorough analysis of impacts to minority, low-income, and tribal populations in the community. It is encouraged to use public participation to identify environmental justice concerns. The results of this preliminary step will help guide actions related to environmental justice. The following two steps should be included in the screening process:

- a) Does the potentially affected community include minority, low-income, or tribal populations? The recipient should seek out alternative data information resources in addition to census information in order to locate as many minority, low-income, and tribal populations in the potentially affected area.

If yes, an enhanced public outreach process is triggered to encourage outreach to the minority, low-income, and tribal populations in the community. This may include multi-lingual advertisements, alternative methods of public outreach, interpreters at meetings, and alternative and easily accessible meeting locations.

- b) Are the human health and environmental impacts likely to fall disproportionately on minority or low-income members of the community or tribal resources?

The recipient should consider cumulative effects associated with the discharge from the facility and bi-products from running the facility. Analysis needs to have a special emphasis on other sources of environmental stress in the area including historical and existing sources. The dependence on the area's natural resources for economic and cultural value should also be identified in this analysis.

If yes, an enhanced public outreach process is triggered to encourage outreach to the minority, low-income, and tribal populations in the community to identify impacts on the larger population as well as minority, low-income, and tribal members of the population.

If disproportionately high impacts are found, the recipient should initiate the development of alternatives and mitigation options or initiate an analysis to identify and assess disproportionately high adverse human health and environmental impacts. If impacts to tribal lands or resources are identified, these impacts should be included in the government-to-government consultation initiated by the Section 106 or Executive Order 05-05 process.

- Members of the community should be involved in developing alternatives and mitigation options. This can be done by organizing an advisory board including representative from community stakeholder groups.
 - All alternatives and mitigation options identified will be included in the cross cutter report. The recipient will also describe any project modifications made based on these suggestions and demonstrate that these changes effectively address disproportionately high human health and environmental impacts. Ecology will determine if the proposed changes will sufficiently address the identified impacts. These changes will be incorporated as terms in the final loan agreement.
2. The cross cutter report should include all the analyses performed on the demographics and impacts to minority, low-income, and tribal populations. Describe efforts at enhanced public outreach, project alternatives suggested as a result, and any modifications that will be included in the final project.
 3. If additional environmental justice issues are identified later in the process, the recipient should revisit this process to determine the appropriate alternatives or mitigation measures to ensure the least amount of impact feasible due to project and facility activities.

Chapter 8 - Farmland Protection Policy Act

Background

The Farmland Protection Policy Act requires SRF recipients with wastewater construction projects to carefully consider the effect of their project on agricultural land and take alternative or mitigating measures, when appropriate, to ensure that valuable farmland is preserved.

When Congress passed the Farmland Protection Policy Act (FPPA), it acknowledged that the Nation's farmland is a unique natural resource and provides food and fiber necessary for the continued welfare of the people of the United States. Furthermore, Congress realized that each year, a large amount of the Nation's farmland is irrevocably converted from agricultural use to nonagricultural use.

As a result, Congress directed all federal agencies to minimize the extent to which federal programs contribute to conversion of farmland to nonagricultural uses, and to assure that federal programs are compatible with state, local government, and private programs and policies to protect farmland.

Useful References

- FPPA statute : <http://www.usda.gov/rus/water/ees/pdf/fppa.pdf>
- FPPA regulations: <http://www.usda.gov/rus/water/ees/pdf/7cfr658.pdf>
- Natural Resources Conservation Service FPPA information:
<http://www.nrcs.usda.gov/programs/fppa/>
- Farmland Conversion Impact Rating form (AD-1006):
<http://policy.nrcs.usda.gov/OpenNonWebContent.aspx?content=17999.wba>

Procedure

1. Because the FPPA can influence the selection of the project site, it must be addressed early in the planning process. Failure to consider impacts to farms may make a project ineligible for funding.
2. If all work on the project will occur on previously disturbed land within the footprint of an existing facility or on land already committed to urban uses, the FPPA does not apply. Make note of the project site's current land use and zoning in the cross cutter report. No further analysis is required.
3. Recipients with proposed projects located outside of urban areas must determine which project alternatives will convert or otherwise adversely impact critical farmland. Recipients will complete and submit US Department of Agriculture (USDA) form AD-1006 to the Natural Resource Conservation Service (NRCS) to identify critical farmland.

4. If the project does not convert or otherwise adversely impact critical farmland, the project complies with the FPPA. Attach documentation from the NRCS in the cross cutter report. No further analysis is necessary.
5. Recipients with projects that convert or otherwise adversely impact critical farmland must consult with the NRCS and the county planning department. The local office of the NRCS or the State Conservationist may offer advice on:
 - Alternative sites.
 - Actions the SRF applicant must take to protect important farmlands.
 - Sizing of the project as it relates to secondary growth; the continued viability of farming and farm support services in the project area.
 - Alternatives or mitigation measures Ecology and the SRF applicant should take to reduce potential adverse effects on important farmlands.
6. The recipient must consider the recommendations or modifications suggested by NRCS and the county planning department. For each of the recommendations or modifications suggested, document how they were incorporated, or explain why they were not in the cross cutter report.

Chapter 9 - Floodplain Management

Background

In accordance with Executive Order 11988, Floodplain Management, all SRF recipients with wastewater construction projects must determine whether the project will be located in or affect a floodplain, and incorporate measures to avoid adversely affecting the floodplain or be adversely affected by flooding.

Executive Order 11988, Floodplain Management, directs all Federal agencies “to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative.”

The order directed federal agencies (and those receiving federal funds including SRF applicants) to provide leadership and take action to:

- Reduce the risk of flood loss.
- Minimize the impact of floods on human safety, health, and welfare.
- Restore and preserve the natural and beneficial values served by floodplains.

Useful References

- Executive Order 11988, Floodplain Management: <http://www.usda.gov/rus/water/ees/pdf/eo-11988.pdf>
- Federal Emergency Management Agency (FEMA) for local Flood Insurance Rate Maps (FIRM): <http://www.fema.gov/hazard/map/firm.shtm>
- Washington State Coastal Atlas: www.ecy.wa.gov/programs/sea/sma/atlas_home.html
- FEMA Region X: <http://www.fema.gov/about/regions/regionx/index.shtm>

Procedure

1. The SRF recipient must determine if the project is within or will affect a floodplain. Recipients can use the Washington Coastal Atlas and/or FEMA local Flood Insurance Rate Maps.
2. Is the project within a 100-year floodplain, or will the project affect a floodplain? If the answer is “no”, the project complies with the executive order. Provide a map showing the project’s proximity to any floodplains in the cross cutter report. No further analysis is necessary. If the answer is “yes” go to step 3.
3. For projects located within a 100-year floodplain, the SRF recipient must:

- Contact city or county floodplain development office to determine if a permit is required.
 - Provide early public notice of proposed project.
 - Complete a floodplain/wetlands assessment. This assessment must include a full description of the floodplain and location of any potential adverse effects, an explanation of alternatives (including different sites), mitigation measures, and design modifications. Include a discussion of the alternative to relocate the facility outside of the floodplain in the cost effectiveness analysis.
4. If the floodplain/wetland evaluation identifies a viable alternative location, the recipient must relocate the project outside the 100-year floodplain. If there are no viable alternatives to the project location in the floodplain, the recipient must document the mitigating measures or design modifications incorporated into the design to reduce the project's impacts to the floodplain.
 5. If the project will affect the floodplain, but is not located in the floodplain, the SRF recipient must document the mitigating measures or design modifications incorporated to reduce the project's impacts to the floodplain.
 6. Ecology may provide the documented mitigation measures and design modifications to FEMA, which may provide recommendations for improving mitigation measures or further modifying the project's design to enhance flood protection.

Chapter 10 - National Historic Preservation Act

Background

All SRF recipients must take into account the effect of the action on cultural and historic resources, and take actions to minimize those impacts.

Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effects of their actions on historic properties. The Act requires consultation between agency officials and other parties with an interest in the proposed project, including the responsibility for government-to-government consultation with potentially interested Indian tribes. The goal of consultation is to identify historic properties and cultural resources potentially affected by the proposed action, assess the effects, and seek ways to avoid, minimize, or mitigate any adverse effects on historic properties and cultural resources.

Useful References

- National Historic Preservation Act, 16 USC 470: <http://www.usda.gov/rus/water/ees/pdf/nhpa.pdf>
- Protection of Historic Properties, 36 CFR 800: <http://www.usda.gov/rus/water/ees/pdf/36cfr800.pdf>
- Advisory Council for Historic Preservation: <http://www.achp.gov/>
- National Register of Historic Place: <http://www.cr.nps.gov/nr>
- Tribal cultural resources contact information: <http://www.dahp.wa.gov/sites/default/files/Washington%20Tribes%20Contact%20List.pdf>
- Washington Department of Archaeology and Historic Preservation (DAHP) EZ forms: <http://www.dahp.wa.gov/governors-executive-order-05-05>
- Governor's Office of Indian Affairs: <http://www.goia.wa.gov/>
- Tribal information map: <http://www.goia.wa.gov/Tribal-Information/Map.htm>

Specific areas of tribal interest may be obtained from DAHP and the Governor's Office of Tribal Affairs.

Procedure

The recipient may contact DAHP prior to initiating the Section 106 process, however it is the responsibility of Ecology to initiate communication with tribes and other interested parties to fulfill the requirements of Section 106. The following is the procedure that Ecology will follow to meet Section 106 requirements.

1. Will the project involve any ground disturbing activities or involve any structures 50 years or older?

- If the answer is “no”, the applicant must carefully document this in the cross cutter report. No further action is required.
 - If the answer is “yes”, go to step 2.
2. For any activities involving structures 50 years or older, the applicant fills out a Historic Property Inventory form on DAHP’s Historic Property Inventory online database for their review. The recipient must designate Ecology an owner of the data that is entered into DAHP’s database. DAHP may require more intensive investigation or mitigation of impacts to the structure depending on the historical significance of the building.
 3. For any ground disturbing activities, the recipient will complete DAHP’s EZ-1 form or conduct a site specific cultural resources survey (when there is a high likelihood of cultural resources on the project site). Recipients should use DAHP’s Cultural Resource Report Cover Sheet for cultural resources surveys.
http://www.dahp.wa.gov/sites/default/files/CRSURVEYcoversheet_Aug2011.doc The archaeologist must designate Ecology an owner of the data that is entered into DAHP’s database. If a site specific cultural resources survey is conducted, no EZ-1 form is needed.
 4. The recipient will submit a hard copy and an electronic copy of the EZ-1 Form or site specific cultural resources survey, along with any previous tribal and DAHP correspondence regarding the project to Ecology’s Project Manager. The recipient will include a list of the potential tribes of interest to contact about the project activities as part of the packet of materials.
 5. The SERP Coordinator will compile and send out all of the appropriate correspondence:
 - a. EZ-1 Form: Ecology tribal correspondence letter to all potentially interested tribes with Water Quality Program Manager’s Signature. The SERP Coordinator will then email all tribal correspondence (Ecology and recipient) and EZ-1 form to DAHP for review.
 - b. Site Specific Cultural Resources Survey: Ecology tribal correspondence letter and Ecology letter asking for concurrence to DAHP both signed by Water Quality Program Manager. Electronic versions of both Ecology letters, any tribal correspondence from the recipient, and the survey will be emailed to DAHP for review.
 6. The SERP Coordinator will send DAHP’s and the tribes’ correspondence and responses to the recipient, Project Manager, and Financial Manager
 - a. If DAHP and tribes determine that there will be no effect to cultural resources then the project complies with the National Historic Preservation Act. The recipient will write an inadvertent discovery plan (IDP), if one is not in place already, and then may proceed with project activity. Every person working on the project site must be familiar with the IDP procedures in case any cultural resources are discovered. The recipient will incorporate all mitigation measures into the project.
 - b. If DAHP or a tribe requests more information, the recipient will compile required information and submit to Ecology’s Project Manager and the cultural resources review process will continue.

- c. If the recipient, DAHP, or the tribes determine there will be an effect on cultural or historic properties, go to step 7.
- 7. The determination that the project will have an effect on historic properties triggers a process of formal consultation with EPA, the recipient, the tribes, and DAHP regarding whether the effect is adverse or not. This process can result in a memorandum of agreement detailing how the adverse effects will be resolved. The Section 106 process is complete after the MOA has been signed by the consulting parties.

Chapter 11 - Safe Drinking Water Act

Background

SRF recipients with wastewater construction projects must evaluate the risk of contamination to a sole source aquifer and integrate appropriate preventative measures.

Congress passed the Safe Drinking Water Act in 1974 to protect public health by regulating the Nation's public drinking water supply. Congress amended the law in 1986 and 1996. The law requires many actions to protect drinking water and its sources: rivers, lakes, reservoirs, springs, and ground water wells. The Safe Drinking Water Act is also a cross cutter intended to protect the Nation's sole-source drinking water aquifers.

State and local governments and water utilities play a critical role in protecting source water, because protective actions must be tailored to unique local situations. States provide the resources to help fund local protection activities such as wellhead protection programs. Local governments can ensure that wastewater treatment plants discharging to ground water are not located near water supplies and can protect land in the source water area from development through acquisition or conservation easements.

There are several sole-source drinking water aquifers located in Washington.

Useful References

- EPA's Sole Source Aquifer Program (SSA):
<http://yosemite.epa.gov/r10/water.nsf/sole+source+aquifers/SSA>.
- Map of SSA in the Northwest:
[http://yosemite.epa.gov/r10/water.nsf/b1edf256c3d7d444882567e600623096/2dc5250adf699ef68825753000005d83/\\$FILE/ssa_all%20regional%207-08.pdf](http://yosemite.epa.gov/r10/water.nsf/b1edf256c3d7d444882567e600623096/2dc5250adf699ef68825753000005d83/$FILE/ssa_all%20regional%207-08.pdf)

Procedure

1. Is the project located in the vicinity of a sole source aquifer? Refer to the SSA maps available to help make this determination. If the answer is "no", the cross cutter does not apply. Document the location of the project in relation to sole source aquifers in the cross cutter report. No further analysis is necessary. If the answer is "yes", go to step 2.
2. The recipient should conduct an analysis to determine if the project could contaminate the aquifer.
3. If the analysis shows that the project will not contaminate the aquifer, the recipient should attach the supporting documentation and describe this conclusion in the cross cutter report. The requirements for this cross cutter have been met.

4. If the project could contaminate a sole source aquifer, the recipient must select an alternative site or come up with mitigation measures. If an alternative site cannot be located and mitigation is required, the recipient must contact the Region 10 EPA Sole Source Aquifer Protection Program. The EPA Program will help the recipient identify alternative sites and find adequate mitigation measures. The SRF recipient will describe project modifications or mitigation measures in the cross cutter report.

Chapter 12 - Sustainable Fisheries Act (Essential Fish Habitat)

Background

The SERP requires recipients with wastewater construction projects to consult with EPA and the National Marine Fisheries Service (NMFS) on any federally funded actions (including State Water Pollution Control Revolving Funds) that may adversely affect essential fish habitats (EFH).

Marine fish depend on healthy habitats to survive and reproduce. Throughout their lives fish use many types of habitats including seagrass, salt marsh, coral reefs, kelp forests, and rocky intertidal areas among others. Various activities on land and in the water constantly threaten to alter, damage, or destroy these habitats. NMFS designated fisheries, regional Fishery Management Councils, and federal and state agencies work together to address these threats by identifying EFH for each federally managed fish species and developing conservation measures to protect and enhance these habitats.

The Sustainable Fisheries Act of 1996, is also known as the Magnuson-Stevens Act, calls for direct action to stop or reverse the continued loss of fish habitats. Toward this end, Congress mandated the identification of habitats essential to managed species and measures to conserve and enhance this habitat. Congress also directed that fisheries management plans (FMP) be developed to protect these essential fish habitats, and NMFS implements and enforces the management measures in the FMPs.

Useful references

- Magnuson-Stevens Fishery Conservation and Management Act:
<http://www.nmfs.noaa.gov/sfa/magact/>
- NOAA Northwest Regional Office Sustainable Fisheries Division:
<http://www.nwr.noaa.gov/Regional-Office/Sustainable-Fisheries/index.cfm>
- Essential Fish Habitat Mapper:
http://sharpfin.nmfs.noaa.gov/website/EFH_Mapper/map.aspx

Procedure

1. The recipient will determine whether or not the project will have any impacts on essential fish habitat as defined by NMFS. The recipient must include the date of the resources search to ensure a current listing of EFHs.
2. The recipient must compile information to determine the severity of the impact. This may include information regarding the project, EFHs in the vicinity, and the effect the project will have on the EFH. This information is compiled in an Essential Fish Habitat – Biological Assessment (BA). (This BA is often combined with the BA prepared for the Endangered

Species Act.) The recipient will work with Ecology when compiling the required information to ensure the level of detail and supplemental documentation meets reporting requirements. The project description in the BA must include any mitigation or protective elements incorporated into the project.

3. Ecology will review the recipient's BA to ensure it is complete and adequate. Ecology may request additional information, analysis, or documentation to complete the BA. When Ecology believes the BA is complete, Ecology will forward the BA to EPA.
4. EPA will evaluate the BA and make a formal determination regarding the project's effect on EFH(s). EPA may request additional information from the recipient before making a formal determination. The determination will either be:
 - a. The project has ***no adverse effect*** on EFH. In this case the EPA prepares a "No adverse effects" letter justifying this determination and mails it to Ecology and the recipient. The project is in compliance with the Sustainable Fisheries Act. The recipient must attach the EPA's "No Adverse Effects" letter with the cross cutter report. No further analysis is required.
 - b. The project ***may adversely affect*** EFH. The EPA will initiate consultation with the NMFS.
5. If the EPA determines the project ***may adversely affect*** EFH then they will forward the BA documentation package to NMFS to initiate formal consultation. NMFS will respond informally or in writing. The NMFS comments may include conservation recommendations, if appropriate. (EFH formal consultation required by a "***may adversely affect***" determination may be conducted concurrently with any informal or formal ESA consultation).
6. If the NMFS comments include EFH conservation recommendations, the recipient must incorporate the recommendations into the project, or explain why they chose not to follow the recommendations. If the recipient does not follow the NMFS conservation recommendations, Ecology must further consult with the EPA regional office.
7. The recipient will describe the modifications or mitigation measures or the reasons not to follow the NMFS conservation recommendations in the cross cutter report.

Chapter 13 - Wetland Protection

Background

All SRF recipients with wastewater construction projects must carefully consider the effects on wetlands, and minimize the destruction, loss, or degradation of wetlands.

Wetlands play an integral role in maintaining the quality of life through material contributions to our national economy, food supply, water supply and water quality. Wetlands also provide flood control, fish, wildlife, and plant resources, and contribute to the health, safety, recreation, and economic well-being of all people.

Wetlands provide essential habitat for the breeding, spawning, nesting, migration, wintering, and ultimate survival of a large portion of migratory and resident fish and wildlife. Affected species include migratory birds, commercially and recreationally important finfish, shellfish, and other aquatic organisms. Wetlands also contain many unique species and communities of wild plants.

Executive Order 11990, *Protection of Wetlands*, and other implementing rules govern the protection of wetlands. The federal government and activities it supports (such as the SRF program) must, to the extent possible, avoid the long- and short-term adverse impacts associated with the destruction or modification of wetlands. Federally supported actions must also avoid direct or indirect support of new construction in wetlands wherever there is a practical alternative.

Useful References

- Department of Ecology Wetland contacts: <http://www.ecy.wa.gov/programs/sea/wetlands/contacts.htm>
- Protection of Wet Lands Executive Order 11990: <http://www.usda.gov/rus/water/ees/pdf/eo-11990.pdf>
- Appendix A: Statement of Procedures on Floodplain Management and Wetlands Protection: <http://www.epa.gov/compliance/resources/policies/nepa/floodplain-management-wetlands-statement-pg.pdf>
- National Wetlands Inventory: <http://www.fws.gov/wetlands/>
- WA State Coastal Atlas: www.ecy.wa.gov/programs/sea/sma/atlas_home.html

Procedure

1. The recipient must assess whether or not the project will be located in or affect a wetland. Resources for identifying wetlands include the National Wetland Inventory and the

Washington Coastal Atlas, but in some circumstances delineation surveys or site investigations may be necessary.

2. If the project does not affect any wetlands the project is in compliance with the cross cutter. Provide documentation in the cross cutter report using wetlands inventory maps or similar resources. No further analysis is necessary.
3. If the project will affect wetlands, the recipient must prepare an assessment of the impacts and evaluate alternative locations to avoid impacts and steps proposed to mitigate these impacts. This assessment may be combined with the similar assessment of impacts to floodplains.
4. If a practicable alternative is identified it must be selected to avoid impacts to wetlands. Describe this alternative in the cross cutter report and attach appropriate documentation. No further analysis is necessary.
5. If there are no practicable alternatives that avoid all impacts the recipient must work to minimize them. The recipient will prepare an assessment that demonstrates they have:
 - a. Carefully considered all alternatives to locating the project in or affecting the wetland.
 - b. Selected the only practicable alternative.
 - c. Taken adequate measures to mitigate damage to the wetland, including its natural systems.
6. Submit this assessment to Ecology's regional wetlands expert in the Shorelands and Environmental Assistance (SEA) Program and the Water Quality regional Project Manager for review and comment. Ecology must coordinate with both the U.S. Fish and Wildlife Service and the EPA regional office and provide their comments to the recipient for incorporation in to the final project.
7. The recipient must provide an opportunity for the public to review and comment on the project, impacts to wetlands, and the proposed project changes.
8. The recipient must describe all changes to the project and how impacts to wetlands are avoided or minimized in the cross cutter report.

Chapter 14 - Wild and Scenic Rivers Act

Background

The Wild and Scenic Rivers Act prohibits federal assistance for projects that would have direct and adverse effects on, invade, or unreasonably diminish the special values of a designated wild and scenic river.

According to the Federal Wild and Scenic Rivers Act, certain selected rivers of the Nation possess outstanding remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values. The Act requires these rivers be preserved in free-flowing condition and the immediate environments of these rivers be protected for the benefit and enjoyment of present and future generations. Congress declared the national policy of dam and other construction at appropriate sections of the Nation's rivers needs to be balanced by a policy that would preserve other selected rivers. These rivers or segments of rivers are to be maintained in their free-flowing condition to protect water quality and fulfill other conservation purposes.

The Act establishes a national wild and scenic rivers system, designating the initial components (streams and stream segments) of that system, and prescribing the standards for adding components to the system.

Useful References

- 16 USC 1271 – Wild and Scenic Rivers Act:
<http://www.usda.gov/rus/water/ees/pdf/wsra.pdf>
- 36 CFR Part 297 - Subpart A: Wild and Scenic Rivers, Water Resources Projects:
http://www.access.gpo.gov/nara/cfr/waisidx_00/36cfr297_00.html
- National Park Service Wild and Scenic Rivers Information:
<http://www.nps.gov/ncrc/portals/rivers/index.htm>

Procedure

1. If the project is not located in the drainage basins of the Klickitat River, the Skagit River, or the White Salmon River, the applicant must include a statement to that effect in the cross cutter report. No further analysis is required.
2. If the project is located in the drainage basins of the Klickitat River, the Skagit River, or the White Salmon River, the applicant must assess the project's affect on the free flowing character of the of the river.

3. If the applicant's analysis shows there are no effects to the free flowing character of the river, the applicant must explain this in the cross cutter report. The applicant must also attach supporting documentation. This satisfies the requirements of the cross cutter.
4. If the project will affect the free flowing character of the river, the recipient must contact the US Forest Service.
5. The recipient must incorporate agency modifications and recommendations into the project, describe these modifications in the cross cutter report, and must explain why they decided to reject any recommendations that were not incorporated.

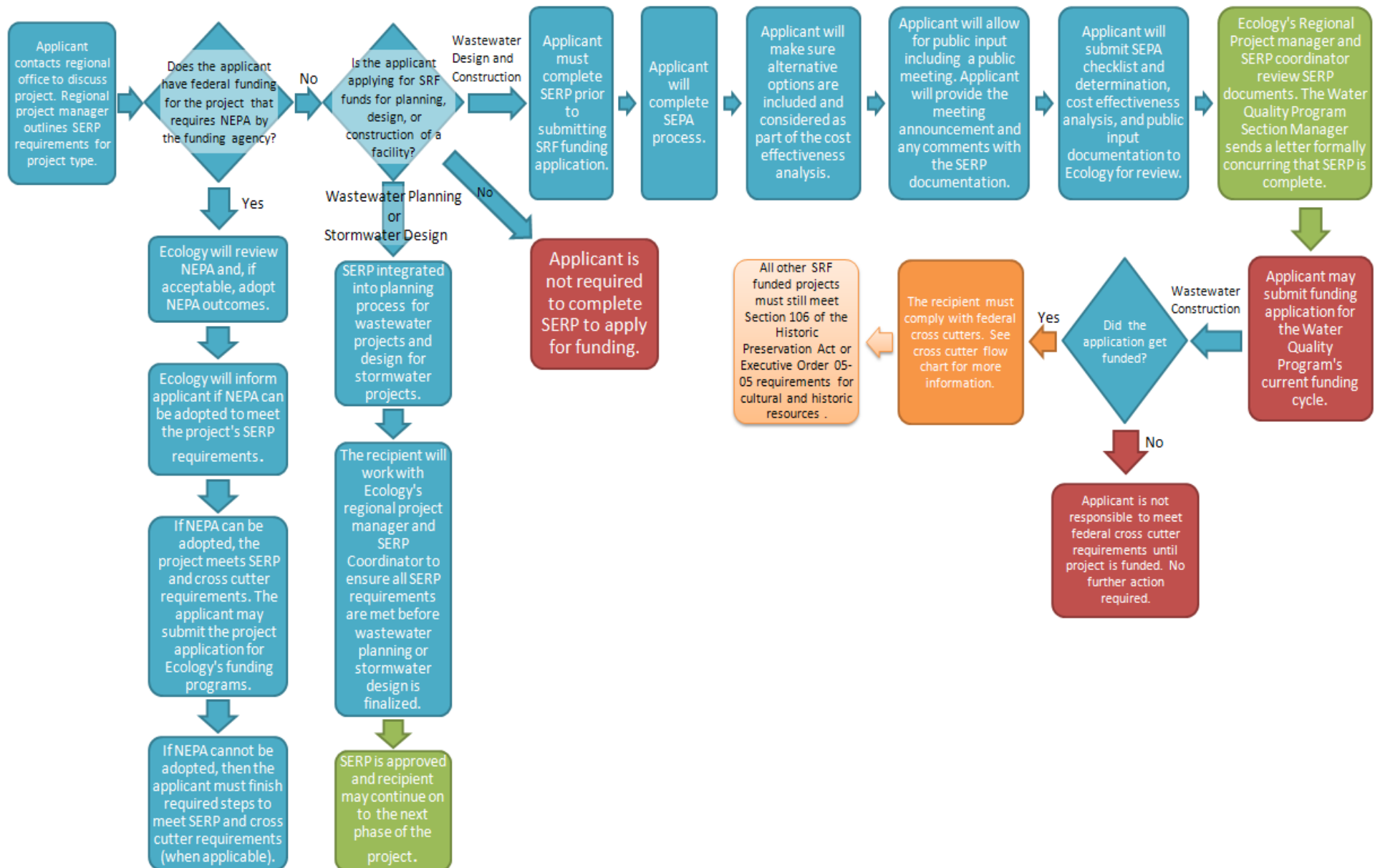
Appendix A –Abbreviations and Acronyms

BA	Biological Assessment
BO	Biological Opinion
CAA	Clean Air Act
CZMA	Coastal Zone Management Act
CZMP	Coastal Zone Management Program
DAHP	Washington State Department of Archaeology and Historic Preservation.
DNS	Determination on non-significance, in regards to the State Environmental Policy Act
EFSEC	Energy Facility Site Evaluation
EIS	Environmental Impact Statement.
ESA	Endangered Species Act, 16 USC 1531.
EFH	Essential Fish Habitats
EPA	The Federal Environmental Protection Agency.
FEMA	Federal Emergency Management Agency
FIRM	Flood Insurance Rate Map
FMP	Fisheries Management Plans
FPPA	Farmland Protection Policy Act
NMFS	National Marine Fisheries Service.
NEPA	National Environmental Policy Act
NRCS	National Resources Conservation Service
ORMA	Ocean Resource Management Act
SRF	The Water Pollution Control Revolving (Loan) Fund

DRAFT

SEA	Ecology's Shorelands and Environmental Assistance Program
SEPA	State (of Washington) Environmental Policy Act, <i>Chapter 43.21C RCW</i> .
SERP	State Environmental Review Process
SIP	State (of Washington Air Quality) Implementation Plan
SSA	Sole source aquifer
USDA	United States Department of Agriculture
USFWS	United States Fish and Wildlife Service

Appendix B – SERP and Cross Cutter Flowcharts



Before the funding agreement can be signed, the recipient with a facilities construction project must meet federal cross cutter requirements. The Recipient must include the SERP and Federal Cross Cutter Coversheet when the report is submitted to Ecology. The report must contain information on all cross cutters listed below even if the cross cutter is not applicable to the project. NEPA may be substituted for this process. Please refer to the SERP and Cross Cutters Guidelines for more detailed information on federal cross cutters and guidance.

Clean Air Act

If project is not in or by a nonattainment area, no further analysis needed. If in or by an attainment area go to next step.

Determine direct and indirect effects no temporary or construction related emissions and document.

If emissions are below de minimis thresholds, project in compliance. If not, go to next step.

Recipient must prepare a conformity analysis and work with Ecology's Air Quality Program or local clean air agency to demonstrate the project meets the approved State Implementation Plan.

Coastal Zone Management Act

If project is not in one of the 15 coastal counties, no further analysis needed. If it is a coastal county, go to next step.

Applicant should review project and apply for certification with federal consistency requirements with Shoreline Management Act, SEPA, Clean Water Act, Clean Air Act, Energy Facility Site Evaluation Council, and Ocean Resources Management act, with Ecology's SEA Program. A certification form is

Include Ecology's certification concurrence with cross cutter report. No further action needed.

If there is an issue with consistency, Ecology's WQ program will facilitate consultation between the recipient and the SEA Program. Funding cannot be received until there is a consistency determination.

Endangered Species Act

Applicant conducts research on what listed species or critical habitats maybe impacted by the project and writes a report on any direct, indirect, positive, and negative effects.

If no listed resources are in the area or documentation can support that the project does not effect listed species, "no effect" may be listed in the cross cutter report. If not, go to next step.

Applicant must prepare a Biological Assessment (BA) to determine impact of project on listed species and critical habitats. BA is submitted and reviewed by Ecology before submitted to EPA for a determination.

EPA determines if the project has "no effect," "not likely to adversely effect," or "likely to adversely effect." Applicant should attach "no effect" determination to report. If EPA determines there to be an effect, go to the next step.

A "not likely to adversely effect" determination triggers an informal consultation with USFWS and /or NMFS. After consultation and an opportunity to modify the project based on recommendations, a letter will be sent to EPA, Ecology, and applicant. No further work is needed.

A "likely to adversely effect" determination triggers a formal consultation requiring significant communication between the applicant, Ecology, EPA, and federal services about the project's effects. A biological Opinion is written (BO) and includes a jeopardy determination. The applicant must incorporate recommendations from the BO into the project. BO, BA and jeopardy determination should be attached to the report submitted to Ecology how modifications have been incorporated.

Environmental Justice

Conduct an analysis of environmental impacts caused by the project on the surrounding area.

Determine if these impacts affect minority, low-income, or tribal communities and if human health or environmental impacts are disproportionate to these communities.

If these communities are affected or these is a disproportionate impact the recipient should include an enhanced outreach effort during the public comment period and public meeting,

The recipient should take input from the public and incorporate mitigation measures to address disproportionate impacts.

All mitigation implemented should described in the cross cutter report.

If environmental justice issues are identified later in the project, this process should be revisited.

Farmland Protection Policy Act	Floodplain Management Executive Orders	National Historic Preservation Act	Safe Drinking Water Act
<p>If project occurs on previously disturbed land, FFPA does not apply. Applicant should note current landuse and zoning in report.</p>	<p>Recipient will consult FEMA flood maps to determine if the project is in a floodplain.</p>	<p>If the project has no land disturbing activities, recipient will indicate this in the cross cutter report and no further action is needed.</p>	<p>If the project is not in the vicinity of a sole source aquifer, the cross cutter does not apply. This should be indicated in the report, then no further action needed.</p>
<p>Applicant should note if the project is outside an urban area and identify what alternatives convert or adversely impact critical farmland. Applicants will complete and submit a USDA form AD-1006 to id critical farmland.</p>	<p>Projects not within the 100-year floodplain meet the Executive Order requirements.</p>	<p>For soil disturbing activities, the recipient will fill out an EZ-1 form or conduct a cultural resources survey and submit it to Ecology's regional project manager.</p>	<p>If there is a sole source aquifer, recipient will contact the EPA Sole Source Aquifer Protection Program to assist and determine if more investigations are required to determine impacts.</p>
<p>The recipient must consult with NRCS and the county planning department. The NRCS can provide recommendations to reduce or eliminate impacts.</p>	<p>Projects within the 100-year floodplain must determine if a permit is required, hold an early public notice, and complete a floodplain/wetland assessment.</p>	<p>The regional project manager submits paperwork to SERP Coordinator. The SERP Coordinator contacts DAHP and Indian Tribes.</p>	<p>If there is mitigation for the alternative, the recipient will provide info to Ecology and describe in the cross cutter report.</p>
<p>The recipient must consider recommendations or modifications suggested by NRCS and the county planning department. These items should be included in the report and how they were incorporated or why they</p>	<p>The project location must move if a viable alternative is located. If not, mitigating measures must be incorporated.</p>	<p>Depending on feedback from DAHP and Indian Tribes, additional work may be needed (survey, sampling, etc) or no effect is determined.</p>	
		<p>Recipient must have an inadvertent discovery plan in place before work can begin. If a determination of no impact on cultural or historic resources is made, work on the project may begin.</p>	
		<p>A determination that project activities will effect cultural or historic resources requires formal consultation between EPA, DAHP, recipient, and Indian Tribes. An MOA may have to be negotiated in order to complete the process.</p>	

Sustainable Fisheries Act

Analysis from this cross cutter may be combined with the Endangered Species Act. The recipient will determine impacts of the project on essential fish habitat.

The recipient will compile info on the severity of the impact in an Essential Fish Habitat - Biological Assessment (EFH-BA).

Ecology will review the EFH-BA and forward onto EPA for consideration and a determination of "no adverse effect" or "may adversely effect".

If there is a "no adverse effect" determination, the recipient will include a copy of the determination in the cross cutter report.

If "may adversely effect" is determined EPA will forward the determination package to the National Marine Fisheries Service (NMFS) for formal consultation and recommendations.

Recipient responds to the NMFS recommendations describing modifications and mitigation measures, and include them in the cross cutter report. Ecology will consult with EPA if the recipient's changes are inconsistent with

Wetland Protection Executive Orders

If project is not located in or does not affect wetlands, the recipient will provide support in the cross cutter report, and no further action is required.

For a project that impacts wetlands: alternate locations must be considered. If there are no alternatives, an assessment including mitigation must be performed, and the assessment must be submitted to Ecology's Shorelands Program and regional project manager for input.

If no alternatives are possible to avoid impact, the recipient must provide documentation showing all alternatives were considered, only practicable alternative was chosen, and sufficient measures will be taken to mitigate impacts. Ecology will send this information to US FWS and EPA.

Recommendations and required modifications will become special conditions of the loan agreement and included in the cross cutter report.

Wild and Scenic Rivers Act

If project is not located in the Klickitat River, Skagit River, or White Salmon River Basin, the recipient will provide support in the cross cutter report, and no further action is required.

If the project is in one of the basins listed above, the recipient must assess the project's affect on the free flowing character of the river.

A determination of no effect on the free flowing character must be explained in the cross cutter report, and no further action is required.

If there is an effect, the recipient must contact the US Forest Service and incorporate any modification and recommendations into the design. The recipient will include all recommendations in the cross cutter report.

Ecology will assess any recommendations not incorporated into the design and determine if the project can proceed.

All modifications will become special conditions in the loan agreement.

Appendix C – SERP and Cross Cutter Final Products

The following are lists of what the applicant/recipient and Ecology can expect to have in their project files once SERP and cross cutter requirements have been completed and approved.

SERP (no NEPA adoption):

- ✓ Ecology's SERP concurrence letter (completed by Ecology)
- ✓ Ecology's SERP coversheet (completed by the applicant)
- ✓ Ecology's SERP checklist (completed by Ecology)
- ✓ Project's Documentation of SEPA review:
 - SEPA checklist covering entire scope of the project funded by Ecology
 - SEPA determination
 - Affidavit of publication
 - Any comments received during the SEPA process and public comment period
- ✓ Cost effectiveness analysis (if already in project file, does not need to be duplicated for SERP)
- ✓ Documentation of public meeting and all comments (oral comments should be documented and included along with written comments)

Cross Cutters:

- ✓ Ecology's cross cutter concurrence letter (completed by Ecology)
- ✓ Ecology's cross cutter checklist (completed by Ecology)
- ✓ Cross cutter report including all supporting documentation and analyses for all cross cutters. (Some items may be submitted separately for a timely review, such as a BA, but supporting documentation for all cross cutters in the form of a cross cutter report must be in the project file for cross cutter review to be complete.)

SERP and cross cutter adoption from NEPA process:

- ✓ Ecology's environmental review adoption letter (completed by Ecology)
- ✓ Ecology's Environmental Review Adoption Checklist (completed by Ecology)
- ✓ Documentation the scope of work that was reviewed by the federal agency for NEPA is the same scope of work for the Ecology funded project.
- ✓ Documentation that all required cross cutters were evaluated by the federal agency.
- ✓ Documentation for all cross cutters, similar to the cross cutter report. This should include consideration of alternatives, public review and comment, and all cross cutter determinations and mitigation outcomes.

Appendix D – Information on SEPA

General Information on Washington’s State Environmental Policy Act can be found on the internet at <http://www.ecy.wa.gov/programs/sea/sepa/e-review.html>

Electronic versions of SEPA forms may be downloaded from:
<http://www.ecy.wa.gov/programs/sea/sepa/forms.htm>

SEPA Handbook: <http://www.ecy.wa.gov/programs/sea/sepa/handbk/hbtoc.html>

SEPA rule, 197-11 WAC: <http://apps.leg.wa.gov/WAC/default.aspx?cite=197-11>

SEPA statute, Chapter 43.21C RCW: <http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21C>